



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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SEP 16 2011

Nancy J. DiNardo, Chairwoman  
Connecticut Democratic State Central Committee  
330 Main Street, 3rd Floor  
Hartford, CT 06106

RE: MUR 6439

Dear Ms. DiNardo:

This is in reference to the complaint you filed with the Federal Election Commission on December 6, 2010, concerning Linda McMahon for Senate 2010. After considering the circumstances of this matter, the Commission determined to find no reason to believe with respect to certain allegations, dismiss, based on prosecutorial discretion, as to other allegations and violations in this matter and close the file on August 30, 2011, and September 9, 2011. The Factual and Legal Analyses, which more fully explain the basis for the Commission's decision, are enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Christopher Hughey  
Acting General Counsel

BY: Mark D. Shonkwiler  
Assistant General Counsel

Enclosures  
Factual and Legal Analyses

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**MUR 6439**

**RESPONDENTS:**

**Linda McMahon for Senate 2010 and Rob Jentgens, in his official capacity as treasurer**

**Linda McMahon**

**I. INTRODUCTION**

This matter was generated by a complaint filed by the Connecticut Democratic State Central Committee and Nancy DiNardo, State Chair. See 2 U.S.C. § 437(g)(a)(1). This matter involves allegations that World Wrestling Entertainment, Inc. ("WWE") and its Chief Executive Officer ("CEO"), Vince McMahon ("Mr. McMahon"), made prohibited corporate in-kind contributions to Connecticut Republican Senate candidate Linda McMahon ("Mrs. McMahon" or the "Candidate") and her principal campaign committee, Linda McMahon for Senate 2010 and Rob Jentgens, in his official capacity as treasurer ("Committee"). The complaint alleges that WWE coordinated various expenditures for corporate promotional activities and communications with the Candidate and the Committee. The Respondents deny that there was any type of coordination between WWE and Mrs. McMahon and the Committee.

As explained below, the Commission 1) found no reason to believe that Linda McMahon, and Linda McMahon for Senate 2010 and Rob Jentgens, in his official capacity as treasurer violated 2 U.S.C. § 441b(a) by accepting prohibited corporate in-kind contributions in the form of coordinated expenditures with respect to all activity except for the Make-A-Wish ad; and 2) dismissed, as a matter of prosecutorial discretion, the allegation of violations by Linda McMahon, and Linda McMahon for Senate 2010 and Rob Jentgens, in his official capacity as

1 treasurer, of 2 U.S.C. § 441b(a) by accepting prohibited corporate in-kind contributions in the  
2 form of coordinated expenditures with respect to the Make-A-Wish ad.

3 **II. FACTUAL BACKGROUND**

4 WWE is a publicly traded, privately-controlled, sports entertainment corporation dealing  
5 primarily with professional wrestling with major revenue sources also coming from film, music,  
6 product licensing, and direct product sales.<sup>1</sup> Its corporate headquarters are located in Stamford,  
7 Connecticut. Its revenue for fiscal year 2010 is reported to have been \$477.7 million. *Id.* Vince  
8 McMahon is the current CEO of WWE and owns approximately 88% of the total voting powers  
9 of all outstanding shares of WWE. WWE Response, McMahon Affidavit at ¶ 3. Between 1980  
10 and 2009, Mr. McMahon's spouse, Linda McMahon, served as the CEO of WWE. Committee  
11 Response at 2.

12 Linda McMahon was the 2010 Republican nominee for U.S. Senator in Connecticut.  
13 Linda McMahon for Senate 2010 was her principal campaign committee, and Rob Jentgens is  
14 the current treasurer of the Committee. Upon filing a Statement of Candidacy for the 2010  
15 Connecticut Senate race on September 16, 2009, Mrs. McMahon resigned as CEO of WWE, and  
16 on November 6, 2009, she resigned from the WWE's Board of Directors. McMahon Affidavit at  
17 ¶ 4. Mrs. McMahon currently owns approximately 1.2% of the outstanding voting shares in  
18 WWE. WWE Response, McMahon Affidavit at ¶ 3. The Committee did not report receiving  
19 any contributions from WWE during the primary or general election cycles.

20 The complaint alleges that the following WWE activities constitute prohibited corporate  
21 in-kind contributions to Mrs. McMahon and her committee:

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<sup>1</sup> See <http://www.corporate.wwe.com/company/financials.jsp>.

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- 1 • In October 2010, WWE launched a public relations campaign called "Stand Up for  
2 WWE" to respond to what it characterized as inaccurate statements made about  
3 WWE in the context of Mrs. McMahon's political campaign. WWE encouraged fans  
4 to use social media outlets to "correct biased and inaccurate media reports."  
5 Complaint at 2.  
6
- 7 • In conjunction with its October 2010 public relations campaign, WWE  
8 sponsored a statewide television advertisement extolling its work with the  
9 Make-A-Wish Foundation. Complainant alleges that the television  
10 advertisement prominently included a likeness of Linda McMahon.  
11 Complaint at 2.  
12
- 13 • WWE's October 30, 2010, "Fan Appreciation Day" took place in Hartford,  
14 Connecticut. Complainant alleges this event was a "thinly veiled attempt to  
15 rally support for Linda McMahon's candidacy less than 72 hours before  
16 election day." Complaint at 3.  
17
- 18 • WWE scheduled a taping of its "Smackdown" Program in the "heart of the  
19 heavily Democratic city of Bridgeport on election night." Complainant  
20 alleges this event was geared towards suppressing voter turnout in the highly  
21 Democratic urban area. Complaint at 3.  
22

23 Responses were filed on behalf of Mr. McMahon and WWE ("WWE Response") and  
24 Mrs. McMahon and the Committee ("Committee Response"). Both responses deny any  
25 coordination of the WWE corporate promotional activities and communications. The WWE  
26 Response includes affidavits from Mr. McMahon and another WWE official, Michelle Wilson.

### 27 **III. LEGAL ANALYSIS**

#### 28 **A. Prohibited Corporate In-Kind Contributions**

29 The complaint alleges that WWE made prohibited corporate in-kind contributions as a  
30 result of coordinating some or all of its Fall 2010 promotional activities and communications  
31 with Mrs. McMahon and the Committee. Complainant contends that "Linda McMahon  
32 maintains a close personal, familial, and financial connection to WWE, and is relying upon the  
33 resources of that company to advance her campaign in an apparently coordinated manner."  
34 Complaint at 3. The Respondents deny that they engaged in coordination or that any of the

1 communications satisfy the content or conduct prongs of the coordination regulations. The  
2 Committee further contends that WWE's corporate promotional activities and communications  
3 are not subject to the general coordination provision of 11 C.F.R. § 109.20(b) because the  
4 expenditures were not made for the purpose of influencing a federal election, but were "bona  
5 fide" corporate programs designed to defend WWE and promote its corporate image, and they  
6 were not coordinated with Linda McMahon or her campaign. Committee Response at 19.

7 The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits  
8 corporations from making contributions from their general treasury funds in connection with any  
9 election of any candidate for federal office. 2 U.S.C. § 441b(a).<sup>2</sup> Further, no candidate or  
10 political committee may knowingly accept a corporate contribution. *Id.* A coordinated  
11 communication is treated as an in-kind contribution to the candidate, authorized committee, or  
12 political party committee with whom it is coordinated and must be reported as an expenditure  
13 made by that candidate, authorized committee, or political party committee. 2 U.S.C.  
14 § 441a(a)(7)(B)(i); 11 C.F.R. § 109.21(b)(1). A communication is coordinated with a candidate,  
15 an authorized committee, a political party committee, or an agent of any of the foregoing when  
16 the communication 1) is paid for, in whole or part, by a person other than that candidate,  
17 authorized committee, political party committee, or agent; 2) satisfies at least one of the content  
18 standards described in 11 C.F.R. § 109.21(c);<sup>3</sup> and 3) satisfies at least

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<sup>2</sup> The Supreme Court concluded in *Citizens United* that corporations, subject to reporting and disclaimer requirements, may use their general treasury funds to make independent expenditures and electioneering communications. *Citizens United v. FEC*, 558 U.S. \_\_\_, 130 S.Ct. 876, 913 (2010). WWE did not report making any independent expenditures or electioneering communications in 2010.

<sup>3</sup> The Commission recently revised the content standard in 11 C.F.R. § 109.21(c) in response to the D.C. Circuit's decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). The Commission added a new standard to the content prong of the coordinated communications rule. 11 C.F.R. § 109.21(c)(5) covers communications that are the functional equivalent of express advocacy. See Explanation and Justification for *Coordinated Communications*,

one of the conduct standards described in 11 C.F.R. § 109.21(d).<sup>4</sup> All three prongs (payment, content, and conduct) must be satisfied in order for a communication to be deemed coordinated.

The content prong can be satisfied by any one of the following types of content:

- A public communication that is an electioneering communication under 11 C.F.R. § 100.29. 11 C.F.R. § 109.21(c)(1). An electioneering communication is any broadcast, cable, or satellite communication that refers to a clearly identified federal candidate, is publicly distributed within 60 days before a general election or 30 days before a primary election, and is targeted to the relevant electorate. 11 C.F.R. § 100.29.
- A public communication, as described in 11 C.F.R. § 100.26, that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee, unless the dissemination, distribution, or republication is excepted under 11 C.F.R. § 109.23(b). 11 C.F.R. § 109.21(c)(2).
- A public communication that expressly advocates, as defined by 11 C.F.R. § 100.22, the election or defeat of a clearly identified federal candidate. 11 C.F.R. § 109.21(c)(3).
- A public communication that, in relevant part, refers to a clearly identified Senate candidate and is distributed within the candidate's jurisdiction within 90 days of the general election. 11 C.F.R. § 109.21(c)(4).

As set forth below, it appears that two of the WWE activities do not satisfy all three prongs of the coordinated communication regulations. Specifically, the content prong appears to be satisfied as to only one of the communications, the Make-A-Wish television advertisement, and in that case, the reference to the candidate was fleeting. Further, the Responses include

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75 Fed. Reg. 55,947 (Sept. 15, 2010). The effective date of the new content standard is December 1, 2010, after the events at issue in this matter. The new standard would not change the analysis in this Report.

<sup>4</sup> Although Complainant alleges coordination under section 109.21, it is possible to have a coordinated expenditure that is not made for communications. 11 C.F.R. § 109.20(b); see also Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) (11 C.F.R. § 109.20(b) addresses expenditures that are not made for communications, but that are coordinated with a candidate, authorized committee or political party committee).

1 affidavits that deny the complaint's allegations as to the conduct prong being satisfied as to any  
2 of the WWE activities.

3 1. "Stand Up for WWE" promotional campaign

4 In October 2010, WWE launched a public relations campaign called "Stand Up for  
5 WWE" to protect its business interests and reputation from the negative media attacks in  
6 connection with Mrs. McMahon's candidacy. WWE Response at 6. WWE states that it posted  
7 numerous videos on its website designed to give a more balanced presentation of WWE, and  
8 used social media networks (YouTube, Facebook, Twitter) to address the issues raised by the  
9 negative attacks directed at WWE. *Id.* at 6, 8-10; *see also* Exhibits F and N. Complainant  
10 alleges that "it is inconceivable that this major, comprehensive, and public effort aimed directly  
11 at those news organizations currently covering the election was not undertaken in coordination  
12 with Linda McMahon's Senate campaign." Complaint at 2. In response, WWE states that Mr.  
13 McMahon, without the involvement of Mrs. McMahon, asked fans to "join us in responding to  
14 these malicious attacks against our company and you, our viewers."<sup>5</sup> WWE Response at 10,  
15 McMahon Affidavit at ¶¶ 7-11 and Wilson Affidavit at ¶ 25.

16 Respondents assert that much of the content in the "Stand Up for WWE" promotional  
17 program does not constitute public communications, and the limited amount which would  
18 qualify does not satisfy the content prong of the coordination regulations. Committee Response  
19 at 8; WWE Response at 16. Respondents contend that, since most of the promotional activities,  
20 including the web videos, were placed on WWE's website and other websites at no cost, they are  
21 exempted from the Commission's definition of "public communication." 11 C.F.R. § 100.26.

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<sup>5</sup> See Press Release, World Wrestling Entertainment, Inc., Fans Stand Up for WWE, October 18, 2010, available at [http://corporate.wwe.com/news/2010/2010\\_10\\_18.jsp](http://corporate.wwe.com/news/2010/2010_10_18.jsp) (last accessed May 17, 2011).

1 WWE concedes that a “few” of the hundreds of “Stand Up for WWE” communications were  
2 placed on other websites for a fee, and some of the web videos were ultimately aired during  
3 certain telecasts of WWE corporate programming. WWE Response at 16. In particular, WWE  
4 placed, for a fee, on People.com and TMZ.com, the “Celebrities Discuss Experiencing the Power  
5 of WWE” communication.<sup>6</sup> While Respondents concede that such communications are public  
6 communications, they still do not satisfy the content prong because none of these videos  
7 referenced Mrs. McMahon or another clearly identified federal candidate. Committee Response  
8 at 16, n. 13; 11 C.F.R. § 109.21(c). Available information indicates that these “Internet only  
9 communications” do not satisfy the content standards pertaining to public communications  
10 because they do not refer to any clearly identified federal candidate. *See* 11 C.F.R. §§ 100.26,  
11 109.21(c)(2)-(4).

12 **2. “Make-A-Wish” communication**

13 During October 2010, WWE broadcast a state-wide television communication that shows  
14 several images of popular wrestlers who have devoted time to the Make-A-Wish Foundation, and  
15 also includes a brief image of Mrs. McMahon “greeting a young boy in a wheelchair.”<sup>7</sup>  
16 Complaint at 2; WWE Response at 12-13; *see also* McMahon Affidavit at ¶ 29. The image of  
17 Mrs. McMahon, who was not identified by name, is on the screen for approximately two seconds  
18 of the 32-second advertisement. The commercially broadcast Make-A-Wish communication  
19 appears to be the only WWE 2010 promotional advertisement that contains a likeness of Linda  
20 McMahon. Complaint at 2; WWE Response at 12-13. WWE states that the Make-A-Wish

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<sup>6</sup> *See* <http://www.youtube.com/watch?v=h1YCVZknosE> (last accessed May 17, 2011); *see also* WWE Response, Exhibit L (Transcript).

<sup>7</sup> *See also* <http://www.youtube.com/watch?v=S7fmdsZbP98> (last accessed on May 17, 2011).



1 television advertisement was not part of its "Stand Up for WWE" campaign, but instead was part  
2 of another promotional program ("WWE Promotional Ads") that had been approved weeks  
3 before its decision to begin the "Stand Up for WWE" campaign.<sup>8</sup> WWE Response at 12.  
4 However, WWE states that the decision to air the "WWE Promotional Ads" was another  
5 corporate relations decision made as a result of the media scrutiny surrounding Mrs. McMahon's  
6 candidacy. *Id.*

7 Respondents deny that the Make-A-Wish advertisement refers to a clearly identified  
8 federal candidate or constitutes a coordinated communication. Committee Response at 13, 16;  
9 WWE Response at 17. Respondents assert that the very brief image of Mrs. McMahon, in her  
10 capacity as WWE's former CEO, was taken from previously recorded WWE video footage and  
11 did not mention either her name or her candidacy.<sup>9</sup> WWE Response at 13, 17. Respondents do  
12 not deny that the other requirements for the electioneering communication or candidate-reference  
13 content prong standards would be satisfied regarding this advertisement.

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<sup>8</sup> WWE states that this promotional program not only included the Make-A-Wish advertisement, but also included an advertisement discussing the "Wrestlemania Reading Challenge" and an advertisement featuring female performers known collectively as the "WWE Divas" explaining why they enjoy working at WWE. *See* WWE Response, Exhibits I, J and Exhibit N, tracks 7-9.

<sup>9</sup> In the alternative, the Committee argues for the retroactive application of the Commission's new safe harbor for commercial communications, which took effect on December 1, 2010. Committee Response at 17; *see also* *Final Rules and Explanation and Justification for Coordinated Communications*, 75 Fed. Reg. 55,947 (Sept. 15, 2010). The safe harbor excludes from the definition of a coordinated communication any public communication in which a federal candidate is clearly identified only in his or her capacity as the owner or operator of a business that existed prior to the candidacy, so long as the public communication does not promote, attack, support, or oppose ("PASO") that candidate or another candidate who seeks the same office, and so long as the communication is consistent with other public communications made by the business prior to the candidacy. 75 Fed. Reg. at 55,959; *see also* 11 C.F.R. § 109.21(i).

WWE's website contains numerous archived videos of similar types of communications distributed in the past involving its work with the Make-A-Wish Foundation. *See* <http://www.wwe.com>. WWE relies on these facts and argues that because the reference does not PASO Mrs. McMahon, it satisfies the safe harbor's requirements if it had been in effect at the time of the communication at issue. However, since the safe harbor was not in effect at the time of the advertisement, it is inapplicable to this matter.

1 It appears that the Make-A-Wish advertisement meets the content prong because it  
2 satisfies the definition of an electioneering communication and clearly identifies a federal  
3 candidate in a public communication that was publicly distributed and targeted to the relevant  
4 electorate within 90 days of the general election.<sup>10</sup> 11 C.F.R. § 109.21(c)(1), (4).

5 The question as to whether the communication satisfies either 11 C.F.R. § 109.21(c)(1)  
6 or (4) rests on whether the image of Mrs. McMahon in the advertisement is a reference to a  
7 clearly identified federal candidate, as both standards require such a reference. In the  
8 electioneering communication regulations, the term "refers to a clearly identified candidate" is  
9 defined as "the candidate's name, nickname, photograph, or drawing appears, or the identity of  
10 the candidate is otherwise apparent through an unambiguous reference such as 'the President,'  
11 'your Congressman,' or 'the incumbent' or through an unambiguous reference to his or her status  
12 as a candidate such as 'the Democratic Presidential nominee' or 'the Republican candidate for  
13 Senate in the State of Georgia.'" 11 C.F.R. § 100.29(b)(2); *see also* 2 U.S.C. § 431(18) and 11  
14 C.F.R. § 100.17 (defining "clearly identified" in the same or similar terms). Here, the Make-A-  
15 Wish advertisement contains a two-second image of Mrs. McMahon, so it refers to a clearly  
16 identified federal candidate.

17 The Committee argues that under the rationale of Advisory Opinion 2004-31 (Darnow),  
18 the Make-A-Wish communication does not contain a reference to a clearly identified federal  
19 candidate, and thus, does not satisfy 11 C.F.R. § 109.21(c)(1). The Committee argues that the  
20 incidental reference to Mrs. McMahon's likeness was intended to refer to Mrs. McMahon in her  
21 former capacity as CEO of WWE, and in the context of WWE's longstanding relationship with

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<sup>10</sup> There is no information that the Make-A-Wish advertisement satisfies the other two content prong standards, 11 C.F.R. § 109.21(c)(2) and (3), as it does not contain express advocacy or republish the candidate's campaign materials.

1 the Make-A-Wish Foundation.<sup>11</sup> Committee Response at 16. It maintains that the  
2 communication does not mention Mrs. McMahon or her opponent's name, her federal candidacy,  
3 or any other federal candidacy.

4 The facts the Commission considered in reaching the conclusion that the communications  
5 in the Darrow AO did not constitute electioneering communications are different from the  
6 present facts in material ways. First, the candidate (Russ Darrow, Jr.) did not speak or appear on  
7 screen for any of the advertisements. AO 2004-31 at 3. Second, another individual (Russ  
8 Darrow III) speaks and appears in the advertisements.<sup>12</sup> *Id.* at 3. Third, "Russ Darrow" was part  
9 of the name of all the Russ Darrow Group Dealerships (RDG), and RDG had worked for a  
10 decade to develop it as a brand name for all of its dealerships. *Id.* Finally, the Commission  
11 concluded that, for the few advertisements that also included a single reference to "Russ  
12 Darrow" rather than the full name of the dealership, these references, taken together with the  
13 other references in the advertisement, also referred to the business entity and not to the  
14 Candidate.<sup>13</sup> *Id.* Based upon that reasoning, the Commission concluded that the advertisements  
15 did not refer to a clearly identified federal candidate and thus were not electioneering  
16 communications. *Id.*

17 Here, Linda McMahon, the Candidate, actually appears on the screen in the  
18 advertisement. Second, unlike Darrow, Mrs. McMahon's name is not part of WWE's business

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<sup>11</sup> The Committee asserts that the Commission emphasized in Advisory Opinion 2004-31 (Darrow) that it is not precluded "from making a determination that the specific facts and circumstances of a particular case indicate that certain advertisements do not refer to a clearly identified federal candidate and, hence, do not constitute electioneering communications." Committee Response at 16; *see also* AO 2004-31 at 4.

<sup>12</sup> Russ Darrow III, not the candidate, had been the face of the company for over ten years. *Id.*

<sup>13</sup> The Commission noted that, although the name "Russ Darrow" was used throughout the proposed advertisements, most of them references included the full name through which a particular dealership does business. *Id.*

1 name and is not mentioned in the advertisement. Thus, the facts of Darrow are sufficiently and  
2 materially different so that the rationale of the Darrow AO is not applicable to this matter.

3 Accordingly, the Commission concluded that the Make-A-Wish advertisement appears to  
4 constitute an electioneering communication, and satisfies 11 C.F.R. § 109.21(c)(1) because it  
5 refers to Mrs. McMahon, a clearly identified federal candidate, and was broadcast and targeted to  
6 the relevant electorate within 60 days of the general election. Similarly, the advertisement  
7 satisfies 11 C.F.R. § 109.21(c)(4) because it refers to a clearly identified Senate candidate, and  
8 there is no dispute that the communication was publicly distributed within 90 days of the general  
9 election in the candidate's jurisdiction.

10 In sum, the image of the candidate was fleeting and merely incidental to the content of  
11 the communication, and the candidate's name was never mentioned. Under these circumstances,  
12 as a matter of prosecutorial discretion, we dismiss the allegation that the Make-A-Wish  
13 communication is a coordinated communication under 11 C.F.R. § 109.21. *See Heckler v.*  
14 *Chaney*, 470 U.S. 821 (1985).

15 3. "Fan Appreciation Day" event

16 On September 30, 2010, WWE issued a news release announcing that it would hold its  
17 first ever "Fan Appreciation Day" in Hartford, Connecticut, on October 30, 2010, three days  
18 before the election. Complaint at 2. When questioned about the timing of the event, WWE  
19 responded that the event was being held to "thank our fans for the support and *putting up with*  
20 *everything that's been said about the company and sticking by us.*" *Id.* (emphasis in original).  
21 Complainant contends that the event is "little more than a thinly-veiled attempt to rally support  
22 for Linda McMahon's candidacy less than 72 hours before the polls open on Election Day." *Id.*  
23 at 3.

1 Available information indicates that Mrs. McMahon was not present at the event, it was  
2 not publicly broadcast, and there was no specific reference to her name, her opponent's name, or  
3 her candidacy.<sup>14</sup> WWE Response, Exhibit M; Committee Response, Exhibit 3. Accordingly, it  
4 does not appear that this event would even constitute a public communication or an  
5 electioneering communication or that it would satisfy any of the other content prong standards.

6 Therefore, the Commission concluded that the content is not met with respect to this  
7 event. Because the event does not meet the content prong, and a communication must satisfy all  
8 three elements of the three-pronged test set forth in 11 C.F.R. § 109.21(a) to be a coordinated  
9 communication, "Fan Appreciation Day" was not a coordinated communication.

#### 10 4. "Smackdown" episode taping

11 Complainant contends that WWE scheduled a taping of its "Smackdown" program in  
12 "the heart of the heavily Democratic city of Bridgeport on election night, suggesting an intent to  
13 suppress voter turnout in the area."<sup>15</sup> Complaint at 4. WWE responds that it taped the episode  
14 of one of its regular television shows to discharge its contractual obligations. McMahon  
15 Affidavit at ¶¶ 20 and 23. It further states that the content of the show was "apolitical" and was  
16 developed in the normal course of business by WWE employees who typically write and produce  
17 the program. WWE Response at 11, 17, and McMahon Affidavit at ¶ 22.

18 The Committee Response denies that any public communication occurred in connection  
19 with the taping session or that it contained any references to a federal candidate or express  
20 advocacy. Committee Response at 9, 11, and 15. Available information indicates that the

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<sup>14</sup> A review of the transcript indicates that Mr. McMahon did encourage the attendees to vote on Election Day and to feel free to wear a WWE t-shirt. However, it appears that these were general comments made with no references to a particular candidate, namely, Linda McMahon, or the Senatorial election. *Id.*

<sup>15</sup> The "voter suppression" allegation raised in the complaint is not discussed since it is beyond the Commission's jurisdiction.

1 "Smackdown" episode was recorded in front of a live audience in Bridgeport, Connecticut, on  
2 election night, but was not broadcast until the Friday after the election, or November 5, 2010.<sup>16</sup>  
3 *Id.* at 15. Therefore, it appears that the "Smackdown" taping would constitute a public  
4 communication on the day that it was actually broadcast, but not on the day of taping (Election  
5 Day) since there was no broadcast of the episode on that day. Further, there is no additional  
6 information to suggest that the episode taping would satisfy any of the content or conduct prong  
7 standards.

### 8 5. Conclusions

9 Based on the foregoing, the Commission concluded that the "Stand Up for WWE"  
10 promotional activities and communications, the "Fan Appreciation Day," and the "Smackdown"  
11 Program episode taping do not satisfy the content and conduct prongs of the coordination  
12 analysis. The Commission further concluded that, although the Make-A-Wish communication  
13 satisfies the content prong, here, where the use of Mrs. McMahon's image was merely incidental  
14 to the information in the communication, her name was not used, and where respondents'  
15 affidavits deny coordination, dismissal is appropriate. Finally, there is no available information  
16 to suggest that any of the WWE promotional activities or communications would satisfy the  
17 general coordination requirements pursuant to 11 C.F.R. § 109.20(b). Respondents have denied  
18 that coordination took place between the parties for any of WWE's promotional activities and  
19 communications. Accordingly, as to the Make-A-Wish communication, the Commission  
20 dismissed pursuant to prosecutorial discretion. The Commission found no reason to believe that  
21 Linda McMahon, and Linda McMahon for Senate 2010 and Rob Jentgens, in his official capacity

<sup>16</sup> See also <http://vids2.wwe.com/h50109928/friday-night-smackdown-fri-nov-5> (last accessed May 17, 2011).

**MUR 6439 (McMahon)**  
**Factual and Legal Analysis for**  
**Committee and Linda McMahon**

- 1 as treasurer, violated 2 U.S.C. § 441b(a) by accepting prohibited corporate in-kind contributions
- 2 in the form of coordinated expenditures as to the remaining activities.
- 3

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**MUR 6439**

**RESPONDENTS:**

**World Wrestling Entertainment, Inc.  
and Vince McMahon**

**I. INTRODUCTION**

This matter was generated by a complaint filed by the Connecticut Democratic State Central Committee and Nancy DiNardo, State Chair. *See* 2 U.S.C. § 437(g)(a)(1). This matter involves allegations that World Wrestling Entertainment, Inc. ("WWE") and its Chief Executive Officer ("CEO"), Vince McMahon ("Mr. McMahon"), made prohibited corporate in-kind contributions to Connecticut Republican Senate candidate Linda McMahon ("Mrs. McMahon" or the "Candidate") and her principal campaign committee, Linda McMahon for Senate 2010 and Rob Jentgens, in his official capacity as treasurer ("Committee"). The complaint alleges that WWE coordinated various expenditures for corporate promotional activities and communications with the Candidate and the Committee. The Respondents deny that there was any type of coordination between WWE and Mrs. McMahon and the Committee.

As explained below, the Commission 1) found no reason to believe that WWE and Vince McMahon violated 2 U.S.C. § 441b(a) by making prohibited corporate in-kind contributions in the form of coordinated expenditures with respect to all activity except for the Make-A-Wish ad; 2) dismissed, as a matter of prosecutorial discretion, the allegations of violations by World Wrestling Entertainment, Inc. and Vince McMahon of 2 U.S.C. § 441b(a) by making prohibited corporate in-kind contributions in the form of coordinated expenditures with respect to the Make-A-Wish ad; and 3) dismissed, as a matter of prosecutorial discretion, violations of .



2 U.S.C. §§ 434(f) and 441d relating to WWE's failure to disclose or include a disclaimer on its Make-A-Wish advertisement that qualified as an electioneering communication.

## II. FACTUAL BACKGROUND

WWE is a publicly traded, privately-controlled, sports entertainment corporation dealing primarily with professional wrestling with major revenue sources also coming from film, music, product licensing, and direct product sales.<sup>1</sup> Its corporate headquarters are located in Stamford, Connecticut, with offices also in Los Angeles, New York City, London, Tokyo, and Sydney. Its revenue for fiscal year 2010 is reported to have been \$477.7 million. *Id.* Vince McMahon is the current CEO of WWE and owns approximately 88% of the total voting powers of all outstanding shares of WWE. WWE Response, McMahon Affidavit at ¶ 3. Between 1980 and 2009, Mr.

McMahon's spouse, Linda McMahon, served as the CEO of WWE. Committee Response at 2.

Linda McMahon was the 2010 Republican nominee for U.S. Senator in Connecticut. Linda McMahon for Senate 2010 was her principal campaign committee, and Rob Jentgens is the current treasurer of the Committee. Upon filing a Statement of Candidacy for the 2010 Connecticut Senate race on September 16, 2009, Mrs. McMahon resigned as CEO of WWE, and on November 6, 2009, she resigned from the WWE's Board of Directors. McMahon Affidavit at ¶ 4. Mrs. McMahon currently owns approximately 1.2% of the outstanding voting shares in WWE. WWE Response, McMahon Affidavit at ¶ 3. The Committee did not report receiving any contributions from WWE during the primary or general election cycles.

The complaint alleges that the following WWE activities constitute prohibited corporate in-kind contributions to Mrs. McMahon and her committee:

- In October 2010, WWE launched a public relations campaign called "Stand Up for WWE" to respond to what it characterized as inaccurate statements made about

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<sup>1</sup> See <http://www.corporate.wwe.com/company/financials.jsp>.

1 WWE in the context of Mrs. McMahon's political campaign. WWE encouraged fans  
2 to use social media outlets to "correct biased and inaccurate media reports."  
3 Complaint at 2.

- 4
- 5 • In conjunction with its October 2010 public relations campaign, WWE  
6 sponsored a statewide television advertisement extolling its work with the  
7 Make-A-Wish Foundation. Complainant alleges that the television  
8 advertisement prominently included a likeness of Linda McMahon.  
9 Complaint at 2.
- 10
- 11 • WWE's October 30, 2010, "Fan Appreciation Day" took place in Hartford,  
12 Connecticut. Complainant alleges this event was a "thinly veiled attempt to  
13 rally support for Linda McMahon's candidacy less than 72 hours before  
14 election day." Complaint at 3.
- 15
- 16 • WWE scheduled a taping of its "Smackdown" Program in the "heart of the  
17 heavily Democratic city of Bridgeport on election night." Complainant  
18 alleges this event was geared towards suppressing voter turnout in the highly  
19 Democratic urban area. Complaint at 3.
- 20

21 Responses were filed on behalf of Mr. McMahon and WWE ("WWE Response") and

22 Mrs. McMahon and the Committee ("Committee Response"). Both responses deny any  
23 coordination of the WWE corporate promotional activities and communications. The WWE  
24 Response includes affidavits from Mr. McMahon and another WWE official, Michelle Wilson.

25 **III. LEGAL ANALYSIS**

26 **A. Prohibited Corporate In-Kind Contributions**

27 The complaint alleges that WWE made prohibited corporate in-kind contributions as a  
28 result of coordinating some or all of its Fall 2010 promotional activities and communications  
29 with Mrs. McMahon and the Committee. Complainant contends that "Linda McMahon  
30 maintains a close personal, familial, and financial connection to WWE, and is relying upon the  
31 resources of that company to advance her campaign in an apparently coordinated manner."  
32 Complaint at 3. The Respondents deny that they engaged in coordination or that any of the  
33 communications satisfy the content or conduct prongs of the coordination regulations. The

1 Committee further contends that WWE's corporate promotional activities and communications  
2 are not subject to the general coordination provision of 11 C.F.R. § 109.20(b) because the  
3 expenditures were not made for the purpose of influencing a federal election, but were "bona  
4 fide" corporate programs designed to defend WWE and promote its corporate image, and they  
5 were not coordinated with Linda McMahon or her campaign. Committee Response at 19.

6 The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits  
7 corporations from making contributions from their general treasury funds in connection with any  
8 election of any candidate for federal office. 2 U.S.C. § 441b(a).<sup>2</sup> Further, no candidate or  
9 political committee may knowingly accept a corporate contribution. *Id.* A coordinated  
10 communication is treated as an in-kind contribution to the candidate, authorized committee, or  
11 political party committee with whom it is coordinated and must be reported as an expenditure  
12 made by that candidate, authorized committee, or political party committee. 2 U.S.C.  
13 § 441a(a)(7)(B)(i); 11 C.F.R. § 109.21(b)(1). A communication is coordinated with a candidate,  
14 an authorized committee, a political party committee, or an agent of any of the foregoing when  
15 the communication 1) is paid for, in whole or part, by a person other than that candidate,  
16 authorized committee, political party committee, or agent; 2) satisfies at least one of the content  
17 standards described in 11 C.F.R. § 109.21(c);<sup>3</sup> and 3) satisfies at least one of the

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<sup>2</sup> The Supreme Court concluded in *Citizens United* that corporations, subject to reporting and disclaimer requirements, may use their general treasury funds to make independent expenditures and electioneering communications. *Citizens United v. FEC*, 558 U.S. \_\_\_, 130 S.Ct. 876, 913 (2010). WWE did not report making any independent expenditures or electioneering communications in 2010.

<sup>3</sup> The Commission recently revised the content standard in 11 C.F.R. § 109.21(c) in response to the D.C. Circuit's decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). The Commission added a new standard to the content prong of the coordinated communications rule. 11 C.F.R. § 109.21(c)(5) covers communications that are the functional equivalent of express advocacy. See Explanation and Justification for *Coordinated Communications*, 75 Fed. Reg. 55,947 (Sept. 15, 2010). The effective date of the new content standard is December 1, 2010, after the events at issue in this matter. The new standard would not change the analysis in this Report.

1 conduct standards described in 11 C.F.R. § 109.21(d).<sup>4</sup> All three prongs (payment, content, and  
2 conduct) must be satisfied in order for a communication to be deemed coordinated.

3 The content prong can be satisfied by any one of the following types of content:

- 4 • A public communication that is an electioneering communication under  
5 11 C.F.R. § 100.29. 11 C.F.R. § 109.21(c)(1). An electioneering  
6 communication is any broadcast, cable, or satellite communication that  
7 refers to a clearly identified federal candidate, is publicly distributed within  
8 60 days before a general election or 30 days before a primary election, and  
9 is targeted to the relevant electorate. 11 C.F.R. § 100.29.
- 10 • A public communication, as described in 11 C.F.R. § 100.26, that disseminates,  
11 distributes, or republishes, in whole or in part, campaign materials prepared by  
12 a candidate or the candidate's authorized committee, unless the dissemination,  
13 distribution, or republication is excepted under 11 C.F.R. § 109.23(b). 11 C.F.R.  
14 § 109.21(c)(2).
- 15 • A public communication that expressly advocates, as defined by 11 C.F.R.  
16 § 100.22, the election or defeat of a clearly identified federal candidate.  
17 11 C.F.R. § 109.21(c)(3).
- 18 • A public communication that, in relevant part, refers to a clearly identified  
19 Senate candidate and is distributed within the candidate's jurisdiction within  
20 90 days of the general election. 11 C.F.R. § 109.21(c)(4).

21 As set forth below, it appears that two of the WWE activities do not satisfy all three  
22 prongs of the coordinated communication regulations. Specifically, the content prong appears to  
23 be satisfied as to only one of the communications, the Make-A-Wish television advertisement,  
24 and in that one, the reference to the candidate was fleeting. Further, the Responses include  
25 affidavits that deny the complaint's allegations as to the conduct prong being satisfied as to any  
26 of the WWE activities.

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<sup>4</sup> Although Complainant alleges coordination under section 109.21, it is possible to have a coordinated expenditure that is not made for communications. 11 C.F.R. § 109.20(b); *see also* Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) (11 C.F.R. § 109.20(b) addresses expenditures that are not made for communications, but that are coordinated with a candidate, authorized committee or political party committee).

1                   1.       **“Stand Up for WWE” promotional campaign**

2                   In October 2010, WWE launched a public relations campaign called “Stand Up for  
3       WWE” to protect its business interests and reputation from the negative media attacks in  
4       connection with Mrs. McMahon’s candidacy. WWE Response at 6. WWE states that it posted  
5       numerous videos on its website designed to give a more balanced presentation of WWE, and  
6       used social media networks (YouTube, Facebook, Twitter) to address the issues raised by the  
7       negative attacks directed at WWE. *Id.* at 6, 8-10; *see also* Exhibits F and N. Complainant  
8       alleges that “it is inconceivable that this major, comprehensive, and public effort aimed directly  
9       at those news organizations currently covering the election was not undertaken in coordination  
10      with Linda McMahon’s Senate campaign.” Complaint at 2. In response, WWE states that Mr.  
11      McMahon, without the involvement of Mrs. McMahon, asked fans to “join us in responding to  
12      these malicious attacks against our company and you, our viewers.”<sup>5</sup> WWE Response at 10,  
13      McMahon Affidavit at ¶¶ 7-11 and Wilson Affidavit at ¶ 25.

14                  Respondents assert that much of the content in the “Stand Up for WWE” promotional  
15      program does not constitute public communications, and the limited amount which would  
16      qualify does not satisfy the content prong of the coordination regulations. Committee Response  
17      at 8; WWE Response at 16. Respondents contend that since most of the promotional activities,  
18      including the web videos, were placed on WWE’s website and other websites at no cost, they are  
19      exempted from the Commission’s definition of “public communication.” 11 C.F.R. § 100.26.  
20      WWE concedes that a “few” of the hundreds of “Stand Up for WWE” communications were  
21      placed on other websites for a fee, and some of the web videos were ultimately aired during

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<sup>5</sup> See Press Release, World Wrestling Entertainment, Inc., Fans Stand Up for WWE, October 18, 2010, *available at* [http://corporate.wwe.com/news/2010/2010\\_10\\_18.jsp](http://corporate.wwe.com/news/2010/2010_10_18.jsp) (last accessed May 17, 2011).

1 certain telecasts of WWE corporate programming. WWE Response at 16. In particular, WWE  
2 placed, for a fee, on People.com and TMZ.com, the "Celebrities Discuss Experiencing the Power  
3 of WWE" communication.<sup>6</sup> While Respondents concede that such communications are public  
4 communications, they still do not satisfy the content prong because none of these videos  
5 referenced Mrs. McMahon or another clearly identified federal candidate. Committee Response  
6 at 16, n. 13; 11 C.F.R. § 109.21(c). Available information indicates that these "Internet only  
7 communications" do not satisfy the content standards pertaining to public communications  
8 because they do not refer to any clearly identified federal candidate. *See* 11 C.F.R. §§ 100.26,  
9 109.21(c)(2)-(4).

10                   2.       **"Make-A-Wish" communication**

11           During October 2010, WWE broadcast a state-wide television communication that shows  
12 several images of popular wrestlers who have devoted time to the Make-A-Wish Foundation, and  
13 also includes a brief image of Mrs. McMahon "greeting a young boy in a wheelchair."<sup>7</sup>  
14 Complaint at 2; WWE Response at 12-13; *see also* McMahon Affidavit at ¶ 29. The image of  
15 Mrs. McMahon, who was not identified by name, is on the screen for approximately two seconds  
16 of the 32-second advertisement. The commercially broadcast Make-A-Wish communication  
17 appears to be the only WWE 2010 promotional advertisement that contains a likeness of Linda  
18 McMahon. Complaint at 2; WWE Response at 12-13. WWE states that the Make-A-Wish  
19 television advertisement was not part of its "Stand Up for WWE" campaign, but instead was part  
20 of another promotional program ("WWE Promotional Ads") that had been approved weeks

<sup>6</sup> *See* <http://www.youtube.com/watch?v=h1YCVZknosE> (last accessed May 17, 2011); *see also* WWE Response, Exhibit L (Transcript).

<sup>7</sup> *See also* <http://www.youtube.com/watch?v=S7fmdsZbP98> (last accessed on May 17, 2011).

1 before to its decision to begin the "Stand Up for WWE" campaign.<sup>8</sup> WWE Response at 12.

2 However, WWE states that the decision to air the "WWE Promotional Ads" was another  
3 corporate relations decision made as a result of the media scrutiny surrounding Mrs. McMahon's  
4 candidacy. *Id.*

5 Respondents deny that the Make-A-Wish advertisement refers to a clearly identified  
6 federal candidate or constitutes a coordinated communication. Committee Response at 13, 16;  
7 WWE Response at 17. Respondents assert that the very brief image of Mrs. McMahon, in her  
8 capacity as WWE's former CEO, was taken from previously recorded WWE video footage and  
9 did not mention either her name or her candidacy.<sup>9</sup> WWE Response at 13, 17. Respondents do  
10 not deny that the other requirements for the electioneering communication or candidate-reference  
11 content prong standards would be satisfied regarding this advertisement.

12 It appears that the Make-A-Wish advertisement meets the content prong because it  
13 satisfies the definition of an electioneering communication and clearly identifies a federal

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<sup>8</sup> WWE states that this promotional program not only included the Make-A-Wish advertisement, but also included an advertisement discussing the "Wrestlemania Reading Challenge" and an advertisement featuring female performers known collectively as the "WWE Divas" explaining why they enjoy working at WWE. See WWE Response, Exhibits I, J and Exhibit N, tracks 7-9.

<sup>9</sup> In the alternative, the Committee argues for the retroactive application of the Commission's new safe harbor for commercial communications, which took effect on December 1, 2010. Committee Response at 17; see also *Firm/ Rules and Explanation and Justification for Coordinated Communications*, 75 Fed. Reg. 55,947 (Sept. 15, 2010). The safe harbor excludes from the definition of a coordinated communication any public communication in which a federal candidate is clearly identified only in his or her capacity as the owner or operator of a business that existed prior to the candidacy, so long as the public communication does not promote, attack, support, or oppose ("PASO") that candidate or another candidate who seeks the same office, and so long as the communication is consistent with other public communications made by the business prior to the candidacy. 75 Fed. Reg. at 55,959; see also 11 C.F.R. § 109.21(i).

WWE's website contains numerous archived videos of similar types of communications distributed in the past involving its work with the Make-A-Wish Foundation. See <http://www.wwe.com>. WWE relies on these facts and argues that because the reference does not PASO Mrs. McMahon, it satisfies the safe harbor's requirements if it had been in effect at the time of the communication at issue. However, since the safe harbor was not in effect at the time of the advertisement, it is inapplicable to this matter.

1 candidate in a public communication that was publicly distributed and targeted to the relevant  
2 electorate within 90 days of the general election.<sup>10</sup> 11 C.F.R. § 109.21(c)(1), (4).

3 The question as to whether the communication satisfies either 11 C.F.R. § 109.21(c)(1)  
4 or (4) rests on whether the image of Mrs. McMahon in the advertisement is a reference to a  
5 clearly identified federal candidate, as both standards require such a reference. In the  
6 electioneering communication regulations, the term “refers to a clearly identified candidate” is  
7 defined as “the candidate’s name, nickname, photograph, or drawing appears, or the identity of  
8 the candidate is otherwise apparent through an unambiguous reference such as ‘the President,’  
9 ‘your Congressman,’ or ‘the incumbent’ or through an unambiguous reference to his or her status  
10 as a candidate such as ‘the Democratic Presidential nominee’ or ‘the Republican candidate for  
11 Senate in the State of Georgia.’” 11 C.F.R. § 100.29(b)(2); *see also* 2 U.S.C. § 431(18) and 11  
12 C.F.R. § 100.17 (defining “clearly identified” in the same or similar terms). Here, the Make-  
13 A-Wish advertisement contains a two-second image of Mrs. McMahon, so it refers to a clearly  
14 identified federal candidate.

15 WWE argues that under the rationale of Advisory Opinion 2004-31 (Darrow), the Make-  
16 A-Wish communication does not contain a reference to a clearly identified federal candidate, and  
17 thus, does not satisfy 11 C.F.R. § 109.21(c)(1). WWE argues that the incidental reference to  
18 Mrs. McMahon’s likeness was intended to refer to Mrs. McMahon in her former capacity as  
19 CEO of WWE, and in the context of WWE’s longstanding relationship with the Make-A-Wish

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<sup>10</sup> There is no information that the Make-A-Wish advertisement satisfies the other two content prong standards, 11 C.F.R. § 109.21(c)(2) and (3), as it does not contain express advocacy or republish the candidate’s campaign materials.



1 Foundation.<sup>11</sup> WWE Response at 17. It maintains that the communication does not mention  
2 Mrs. McMahon's candidacy or the Senate campaign.

3 The facts the Commission considered in reaching the conclusion that the communications  
4 in the Darrow AO did not constitute electioneering communications are different from the  
5 present facts in material ways. First, the candidate (Russ Darrow, Jr.) did not speak or appear on  
6 screen for any of the advertisements. AO 2004-31 at 3. Second, another individual (Russ  
7 Darrow III) speaks and appears in the advertisements.<sup>12</sup> *Id.* at 3. Third, "Russ Darrow" was part  
8 of the name of all the Russ Darrow Group Dealerships (RDG), and RDG had worked for a  
9 decade to develop it as a brand name for all of its dealerships. *Id.* Finally, the Commission  
10 concluded that, for the few advertisements that also included a single reference to "Russ  
11 Darrow" rather than the full name of the dealership, these references, taken together with the  
12 other references in the advertisement, also referred to the business entity and not to the  
13 Candidate.<sup>13</sup> *Id.* Based upon that reasoning, the Commission concluded that the advertisements  
14 did not refer to a clearly identified federal candidate and thus were not electioneering  
15 communications. *Id.*

16 Here, Linda McMahon, the Candidate, actually appears on the screen in the  
17 advertisement. Second, unlike Darrow, Mrs. McMahon's name is not part of WWE's business

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<sup>11</sup> The Committee asserts that the Commission emphasized in Advisory Opinion 2004-31 (Darrow) that it is not precluded "from making a determination that the specific facts and circumstances of a particular case indicate that certain advertisements do not refer to a clearly identified federal candidate and, hence, do not constitute electioneering communications." Committee Response at 16; *see also* AO 2004-31 at 4.

<sup>12</sup> Russ Darrow III, not the candidate, had been the face of the company for over ten years. *Id.*

<sup>13</sup> The Commission noted that, although the name "Russ Darrow" was used throughout the proposed advertisements, most of these references included the full name through which a particular dealership does business. *Id.*

1 name and is not mentioned in the advertisement. Thus, the facts of Darrow are sufficiently and  
2 materially different so that the rationale of the Darrow AO is not applicable to this matter.

3 Accordingly, the Commission concluded that the Make-A-Wish advertisement appears to  
4 constitute an electioneering communication, and satisfies 11 C.F.R. § 109.21(c)(1) because it  
5 refers to Mrs. McMahon, a clearly identified federal candidate, and was broadcast and targeted to  
6 the relevant electorate within 60 days of the general election. Similarly, the advertisement  
7 satisfies 11 C.F.R. § 109.21(c)(4) because it refers to a clearly identified Senate candidate, and  
8 there is no dispute that the communication was publicly distributed within 90 days of the general  
9 election in the candidate's jurisdiction.

10 In sum, the image of the candidate was fleeting and merely incidental to the content of  
11 the communication, and the candidate's name was never mentioned. Under these circumstances,  
12 as a matter of prosecutorial discretion, we dismiss the allegation that the Make-A-Wish  
13 communication is a coordinated communication under 11 C.F.R. § 109.21. *See Heckler v.*  
14 *Chaney*, 470 U.S. 821 (1985).

15 **3. "Fan Appreciation Day" event**

16 On September 30, 2010, WWE issued a news release announcing that it would hold its  
17 first ever "Fan Appreciation Day" in Hartford, Connecticut, on October 30, 2010, three days  
18 before the election. Complaint at 2. When questioned about the timing of the event, WWE  
19 responded that the event was being held to "thank our fans for the support and *putting up with*  
20 *everything that's been said about the company and sticking by us.*" *Id.* (emphasis in original).  
21 Complainant contends that the event is "little more than a thinly-veiled attempt to rally support  
22 for Linda McMahon's candidacy less than 72 hours before the polls open on Election Day." *Id.*  
23 at 3.

1 Available information indicates that Mrs. McMahon was not present at the event, it was  
2 not publicly broadcast, and there was no specific reference to her name, her opponent's name, or  
3 her candidacy.<sup>14</sup> WWE Response, Exhibit M; Committee Response, Exhibit 3. Accordingly, it  
4 does not appear that this event would even constitute a public communication or an  
5 electioneering communication or that it would satisfy any of the other content prong standards.

6 Therefore, the Commission concluded that the content prong is not met with respect to  
7 this event. Because the event does not meet the content prong, and a communication must  
8 satisfy all three elements of the three-pronged test set forth in 11 C.F.R. § 109.21(a) to be a  
9 coordinated communication, "Fan Appreciation Day" was not a coordinated communication.

#### 10 4. "Smackdown" episode taping

11 Complainant contends that WWE scheduled a taping of its "Smackdown" program in  
12 "the heart of the heavily Democratic city of Bridgeport on election night, suggesting an intent to  
13 suppress voter turnout in the area."<sup>15</sup> Complaint at 4. WWE responds that it taped the episode  
14 of one of its regular television shows to discharge its contractual obligations. McMahon  
15 Affidavit at ¶¶ 20 and 23. It further states that the content of the show was "apolitical" and was  
16 developed in the normal course of business by WWE employees who typically write and produce  
17 the program. WWE Response at 11, 17, and McMahon Affidavit at ¶ 22.

18 The Committee Response denies that any public communication occurred in connection  
19 with the taping session or that it contained any references to a federal candidate or express  
20 advocacy. Committee Response at 9, 11, and 15. Available information indicates that the

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<sup>14</sup> A review of the transcript indicates that Mr. McMahon did encourage the attendees to vote on Election Day and to feel free to wear a WWE t-shirt. However, it appears that these were general comments made with no references to a particular candidate, namely, Linda McMahon, or the Senatorial election. *Id.*

<sup>15</sup> The "voter suppression" allegation raised in the complaint is not discussed since it is beyond the Commission's jurisdiction.

1 "Smackdown" episode was recorded in front of a live audience in Bridgeport, Connecticut, on  
2 election night, but was not broadcast until the Friday after the election, or November 5, 2010.<sup>16</sup>  
3 *Id.* at 15. Therefore, it appears that the "Smackdown" taping would constitute a public  
4 communication on the day that it was actually broadcast, but not on the day of taping (Election  
5 Day) since there was no broadcast of the episode on that day. Further, there is no additional  
6 information to suggest that the episode taping would satisfy any of the content prong standards.

### 7 5. Conclusions

8 Based on the foregoing, the Commission concluded that the "Stand Up for WWE"  
9 promotional activities and communications, the "Fan Appreciation Day," and the "Smackdown"  
10 Program episode taping do not satisfy the content prongs of the coordination regulations. The  
11 Commission further concluded that, although the Make-A-Wish communication satisfies the  
12 content prong, here, where the use of Mrs. McMahon's image was merely incidental to the  
13 information in the communication, her name was not used, and where respondents' affidavits  
14 deny coordination, dismissal is appropriate. Finally, there is no available information to suggest  
15 that any of the WWE promotional activities or communications would satisfy the general  
16 coordination requirements pursuant to 11 C.F.R. § 109.20(b). Respondents have denied that  
17 coordination took place between the parties for any of WWE's promotional activities and  
18 communications. Accordingly, as to the Make-A-Wish communication, the Commission  
19 dismissed pursuant to its prosecutorial discretion and the Commission found no reason to believe  
20 that World Wrestling Entertainment, Inc., and Vince McMahon violated 2 U.S.C. § 441b(a) by  
21 making prohibited corporate in-kind contributions in the form of coordinated expenditures as to  
22 the remaining activities.

<sup>16</sup> See also <http://vids2.wwe.com/h50109928/friday-night-smackdown-fri-nov-5> (last accessed May 17, 2011).

1           **B.     Electioneering Communication**

2           Based on our conclusion that the Make-A-Wish communication constitutes an  
3 electioneering communication, the Commission considered whether this communication is  
4 subject to the disclosure and disclaimer requirements of the Act. *See* 2 U.S.C. §§ 434(f) and  
5 441d. The Act provides that all persons, including corporations, making electioneering  
6 communications that cost, in the aggregate, more than \$10,000 during the calendar year, must  
7 comply with the existing disclosure requirements for electioneering communications. 2 U.S.C.  
8 § 434(f)(1) and (2). While the Commission did not have specific information regarding the cost  
9 of the communication, it would be reasonable to conclude that the cost of the communication  
10 exceeded \$10,000 since WWE admits it aired the communication “throughout the month of  
11 October 2010.” *See* McMahon Affidavit at ¶ 29. Therefore, it appears that the Make-A-Wish  
12 communication is an electioneering communication subject to the disclosure requirements.  
13 WWE failed to report the Make-A-Wish communication as an electioneering communication  
14 and is, therefore, in violation of 2 U.S.C. § 434(f).

15           Electioneering communications are also subject to disclaimer requirements. 2 U.S.C.  
16 § 441d(a). For radio and television communications not authorized by a candidate or his  
17 campaign committee, the disclaimer must identify who paid for the message, state that it was not  
18 authorized by any candidate or candidate’s committee, and list the permanent street address,  
19 telephone number, or World Wide Web address of the person who paid for the communication.  
20 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(b)(3). In addition, the communication must include  
21 an audio statement, conveyed by an unobscured full-screen view of the person making the  
22 statement, informing the listener of the person responsible for the content of the communication.  
23 11 C.F.R. § 110.11(c)(4)(i)-(ii). Further, the contents of the audio statement must also appear in

1 clearly readable writing at the end of the communication. 11 C.F.R. § 110.11(c)(4)(iii). While  
2 the advertisement contains WWE's logo and mentions WWE and its relationship with the Make-  
3 A-Wish Foundation, the Commission concluded that it does not comply with the specific  
4 disclaimer requirements for communications not authorized by a candidate or candidate's  
5 committee.<sup>17</sup> Accordingly, WWE has violated 2 U.S.C. § 441d with respect to its Make-A-Wish  
6 electioneering communication.

7 Despite the foregoing conclusions, under the circumstances here, where the use of Mrs.  
8 McMahon's image stems from footage of an event that was shot at a time when she was an  
9 officer of the company – well before she became a candidate – and the reference to Mrs.  
10 McMahon was only the very brief (two second) use of Mrs. McMahon's image and was merely  
11 incidental to information presented in the Make-a-Wish communication, the Commission  
12 dismissed, as a matter of prosecutorial discretion, WWE's violations of 2 U.S.C. §§ 434(f) and  
13 441d relating to its failure to disclose or include a disclaimer on its Make-A-Wish electioneering  
14 communication. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

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<sup>17</sup> See <http://www.youtube.com/watch?v=S7fmdsZbP98> (last accessed on May 17, 2011).